

G.R.S. IX-5]

Previous references.

✓ Preserve
1920.

File No. 111-20

(Guel)

Serial Nos. *inter alia*

Later references

(21)

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. —

Part B for —

SUBJECT

claim of Sri P.N. Kishna murti and Mrs.
Devaraj Urs to mineral rights in the above villages.

202

Grol 111-20

GENERAL AND REVENUE SECRETARIAT.

1908

Grol 111-20.

File No. 202 of 08-09

Serial Nos. 1 to 6

Papers Filed.

Month _____

SUBJECT.

Claim of Sir P. N. Krishna Murthi and
 Mr. Devaray Wro to mineral rights in their
 Inam villages.

PREVIOUS REFERENCES.

LATER REFERENCES.

D. O. File No. 202 of 1908-1909.

Subject: Claim of Sir P. N. Krishnamurti and Mr. M. Devaraj Urs to mineral rights in their own villages

LIST OF CONTENTS.

Serial No.	D. O. No. and date	From whom	To whom	Brief Subject
1	Dewan's submission note dated 7-11-08			states that the claims made by Sir P. N. Krishnamurti and Mr. M. Devaraj Urs for mineral rights in their own villages need not now be enquired into.
2	1115 12-11-08	Private Secy K H H	Dewan	Calls for further information in the matter
3	1459 14-12-08	Dewan	P. S. K H H	Furnishes the information called for with certain observations.
4	Fr 1180 ¹ / ₂ 31-12-08	P. S. K H H	Dewan	Communicates H. H.'s views in the matter and asks that the ground for adopting the policy suggested may be clearly explained.
5	1625 8-3-09	Dewan	P. S. K H H	Explains the reasons for the policy suggested by the Council
6	H H's order of 10-3-09			accepts the unanimous opinion of the Dewan and Councillors and states that the claims preferred should be rejected.

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Submitted to His Highness.

The claim made by Sir P.N. Krishnanaurti, Inamdar of Nachanahalli Village and by Mr. M. Devaraj Urs, Inamdar of Kadakola and other villages in the Mysore Taluk, to mineral rights in their respective Inam villages having been considered in Council, the Council is of opinion that as the period of 5 years allowed under section 38 of the Land Revenue Code for preferring such claims expired long ago (in November⁶_X 1893), it is out of the question now to enquire into or recognise such claims which were extinguished by operation of law fifteen⁴ years ago.

This may be ~~sanctioned~~. *approved.*

(Intd) V.P.M.

7-11-1908.

13-8

Encl to 1
80 file 202

v

Extract from the Proceedings of the 216th Meeting of the Council of His Highness the Maharaja, held at Bangalore on the 3rd November 1908.

V. Subject. (Clause of Schedule).

Claims of Sir P.N. Krishnamurti and Mr. M. Devaraj Urs to mineral rights in their inam villages.

O P I N I O N.

Section 38 of the Mysore Land Revenue Code expressly declares that claims to mineral ^{rights} ~~not~~ made within 5 years after the passing of the Code shall be barred by limitation. This period expired long ago (in November 1893); and it is out of the question now to enquire into or recognise claims, such as those of the present applicants, which were extinguished by operation of law fifteen years ago.

(Sd) V.P. Madhava Rao,
Dewan of Mysore.

"Extract"

(Sd) K.S. Chandrasekhara Aiyar.

Secy: to Govt.

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Do file 202

3

D.O. "From" No. 1115.

Bangalore,
Mysore
12-11-8.

Dear Mr. Madhava Rao,

This case appears to His Highness to be a rather important one and he does not care to dispose of it summarily without knowing more about the rights and wrongs of the questions involved. Presumably the decision in this case will affect a large number of Inamdars. His Highness would like to see the papers connected with the passing of S. 38 of the Land Revenue Code, which will probably throw some light on the intentions of Government in passing the section. If Dr. Smeeth is correct in his supposition that the section was merely intended to facilitate the development of the mining industry in Mysore, it seems to His Highness a rather strong measure to use the section to confiscate the Inamdars' rights, supposing them to have existed, which of course has to be proved in each case. No doubt Council have considered all these points but there is absolutely no discussion of them on the file. A lenient view has been taken in the case of the Sringeri Jaghir and questions are certain to be asked with reference to the different treatment accorded to the wealthy Jaghir and the humbler Inamdars.

Yours sincerely,

(Sd) E. Macnochie.

12/11/8

D.O. No. 1459/4 files.

Bangalore,
14th Dec: 1908.

Dear Mr. Maconochie,

With reference to your D.O. of the 12th November 1908, I return the papers with a note by the General Secretary containing detailed information on the points raised in your letter.

I need only say here that this is not the first time that the question of inamdar's rights to minerals comes up before Government. It has in fact been discussed thread bare, and I do not know that it is necessary for the Members of Government to minute on the point at length every time a claim is presented by an individual inamdar. The particular claims sent up with the Geological Secretary's note were fully considered and discussed at the Council meeting, and the result is embodied in the Council opinion submitted to His Highness.

You will see from the papers relating to the Sringeri Jaghirdar's case that it is agreed on all hands that claims not presented within the period of 5 years mentioned in section 38 of the Land Revenue Code are absolutely barred and cannot now be recognised.

In these circumstances the suggestion that any one contemplates the use of the section "to confiscate the inamdar's rights" comes as a great surprise.

As far Dr. Smeeth's opinion, allow me to say that he is not an authority on points of interpretation of law; nor is he in a position to claim any special consideration for his opinion on the ground that he was present at, and conversant with, the discussions connected with the passing of the code.

With reference to the concluding portion of your D.O., I must remark that cases referred to are altogether different and involve quite different considerations, as pointed out in the General Secretary's note. The grant of mineral rights to the Sringeri Jaghir was a special act of grace prompted by considerations of the past history of the Matt and the veneration

in which the institution and the Guru are held.

Such being the case, there is no question at all here of a "lenient view" being taken in the case of "the wealthy Jaghir" and a different treatment to "the humbler inamdars" as you seem to think there is.

Yours sincerely,

(Sd) V.P. Madhava Rao.

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Confidential.

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Mysore,

31st December 1904.

Dear Mr. Madhava Rao,

With reference to your letter of the 14th inst: re the question of the rights of Inamdras to minerals, I am directed to reply as follows.

His Highness is aware that the matter has been frequently discussed and was considered in connection with the case of the Sringeri Jaghir. In the latter case, however, the main question was the treatment of the Sringeri Jaghir in the matter. It was admitted that all rights have lapsed under s. 38 of the Land Revenue Code, and that a grant was necessary. Council also expressed the opinion, with reference to the general question, that it was inadisable to amend s. 38, at this distance of time so as to extend the period within which claims were to be put forward. His Highness is also aware that the sannad making a grant ~~xxx~~ to the jaghir was carefully worded so as not to prejudice the cases of other Inamdars. This treatment of the case, however, left the hands of Government entirely free and His Highness did not and does not understand that the case of the Inamdars has been disposed of and is done with, and now that their case has come up in concrete form, he is not disposed to consider that the last word on the subject has been said.

You repudiate with some warmth the idea that there can be any suggestion of confiscation involved and you say that the suggestion comes as a surprise. Why it should be so is not clear to His Highness, considering that you used the expression yourself no longer ago than May 1906 (Flag 1) and that Sir Sheshadri Iyer did so on more than one occasion. In his note of the 13th July 1897 Sir Sheshadri Iyer expressed himself very clearly on the subject and said that being mainly responsible for the Revenue Code he felt "bound to bring forward some proposal for annulling the confiscation" which had resulted under it. With reference to your concluding remarks, I am to observe

that Sir Sheshadri also described the procedure of dealing with individual cases, by special concessions as ~~invidious~~. There is in fact, the best possible authority for every point to which attention was drawn, under His Highness' directions, in my letter of the 12th November. The exception is Mr. Smeeth's suggestion as to the possible intention of Government when framing the the Land Revenue Code. With regard to this I am to observe that Mr. Smeeth was not referred to as an ~~authority~~ on the interpretation of the law but as a mining expert who has had experience of the relations between Governments and private owners in the matter of mineral rights in many parts of the world.

The 1st Councillor in his minute of the 22th February has stated his view of the case clearly ~~and~~ ably but beyond that and the Council Resolution of the 5th March 1907, His Highness has nothing ^{to} go upon. His Highness considers that where such large interests are involved he is entitled to have the individual views of the Councillors and the Dewan placed in detail before him, especially where, as in the present case, the Dewan's views have undergone a radical transformation within the space of a few months.

In His Highness' opinion the question for decision is whether the ~~Inam~~ Inamdars have been treated fairly or not, and, if the decision is that they had rights but that they have been wiped out by a very summary law, whether Government should take full advantage of that law or should give them another chance. Mr. Ananda Rao appears to hold that they never had any rights, and that is an intelligible position. His Highness holds no brief for the Inamdars and has an open mind on the question. But he feels that when he is asked to commit himself to a definite policy on an important question like this the grounds for adopting that policy should be stated clearly and unmistakeably.

Yours sincerely,

(Sd) E. Maconochie.

B.S.

5
50 file 201
Go. No 1625/ file

8
Bangalore

8th March 1909.

Dear Mr Macdonochie,

Please refer to your letter of the 31st December 1908 on the question of the rights of certain inamdars to minerals in their inam villages.

In your letter you say that His Highness "is aware that the Sannad making a regrant" to the Sringeri Jahgir "was carefully worded so as not to prejudice the cases of other inamdars", that "this treatment of the case however left the hands of Government entirely free" and that "His Highness did not and does not understand that the case of the inamdars has been disposed of and done with". With reference to this I must say that, from the opinion of the Council on the Sringeri case which I thought was accepted by His Highness, and from the form of the Sannad which was approved by him, I was under the impression that the general question of the mineral rights of inamdars was also settled. The opinion of the Council on that case was as follows:-

"It does not seem advisable at this distance of time to amend Section 38 of the Mysore Land Revenue Code, with a view to extending the time prescribed for preferring claims to mineral rights. His Highness the Maharaja would, however, be justified, on a consideration of the

"historic basis of the right in the case of the Sringeri
 "Jahgir, in treating that case as a special one, and by
 "a fresh grant conferring mining rights on the Mutt as a
 "matter of grace."

As I said before I thought that this opinion was accepted by
 His Highness and in that case it could only mean that the miner-
 al rights, if any, of those inamdars who had not preferred their
 claims within the period fixed in Section 38 of the Land Revenue
 Code should be held to have entirely lapsed. This is also the
 only inference that I can draw from the preamble of the Sannad
 approved by His Highness, which is as follows:-

"Whereas the right to minerals in the Sringeri Jahgir
does not at present vest in the Guru of the Sringeri Mutt
 &c."

If the right to minerals in the Sringeri Jahgir did not vest in
 the Guru this could only have been by the operation of Section
 38 of the Land Revenue Code and if this section so operated in
 the case of the Sringeri Jahgir, it must be held to have led
 to the same result in the case of the other inamdars who failed
 to prefer their claims within the period fixed by the Section.

With this explanation you may perhaps also see that

you are under a misapprehension in re-

In these circumstances the
 suggestion that any one contem-
 plates the use of the section "to
 confiscate the inamdar's rights"
 comes as a great surprise.

gard to the passage in my letter of the

X
 14th December quoted in the margin. In

the previous sentence I say that "You .

will see from the papers relating to the Sringeri Jahgirdar's case that it is agreed on all hands that claims not presented within the period of 5 years mentioned in section 38 of the Land Revenue Code are absolutely barred and cannot now be recognised.", and I say that in these circumstances (i.e. seeing that everybody is agreed that claims not presented within the period of 5 years cannot now be recognised) the suggestion that any one contemplates the use of the section "to confiscate the inamdar's rights" comes as a great surprise. The rights, if any existed, have already been extinguished, or if you prefer to have been use that term "confiscated" (The expression I have used in my note of the 14th May 1906 is "what would look like confiscating"). It is the suggestion contained in your letter of the 12th November 1908, that anybody contemplates to use the section to now confiscate the Inamdar's rights that I repudiate.

With reference to the remark that "His Highness considers that where such large interests are involved he is entitled to have the individual views of the Councillors and the Dewan placed in detail before him", the Second Councillor has recorded his opinion on the question, and the First Councillor has added to his original minute and I now proceed in this letter to briefly record my own opinion on the question. I have not much to add to the views expressed by the Second Councillor

in his minute ^{with} which I generally agree. The First Councillor thinks that the inamdars never had any mineral rights, but in this view I cannot agree. It may be that when any grant was made, the right to minerals was not definitely in the grantor's mind, but in the case of many grants the expressions used indicate that the grantor had no idea of reserving to himself any rights. There may be sources of income which were not known at the time ~~at~~ the grant was made, but which may become known later on, and except where a residue of rights is intended to be retained by the grantor it must be held that the transfer is complete and extends to all profits of all kinds that may accrue from the inam. This was also the view accepted by the Government before the passing of the Land Revenue Code. In his letter dated 16th September 1886 to the Resident, Mr. Seshadr said "Where no residue of rights is intended to be retained by the grantor, the old grants generally contain a statement of the grant of the eight incidents of property known in Sanskrit as (1) Jala, (2) Taru, (3) Pashana, (4) Nidhi-Nikshopa, (5) Akshina, (6) Agami, (7) Siddha, and (8) Sadhya. A statement in these terms or to the like effect will be accepted by the Mysore Government as conveying a right to minerals." In British India also a similar interpretation appears to be put on these terms when they occur in Sannads.

If this view is accepted it is reasonable to suppose that there were many more inamdars than the 26 who preferred their claims in time, whose Sannads conveyed mineral rights to them. But they either because they were ignorant of the provisions of the new law or because they did not expect that the inams contained any minerals of value, failed to prefer their claims, which have therefore been extinguished. It would have been well if the provisions of the new law had been prominently brought to the notice of those whose vested interests were likely to be affected by it. I would even go the length of saying that it would have been better if we had not inserted the existing sub-section (3) in Section 38 of the Land Revenue Code, but had stuck to the corresponding section of the Bombay Code. I was a member of the select committee appointed to consider a report on the original draft of the Land Revenue Code and my opinion as well as the opinion of my colleagues on that committee may be found at page 77 of the printed collection. But our view was not accepted and it is unnecessary for me to trace the history of the legislation and say how the section came to be passed in its present form. What we have now to do is to face the fact that section 38(3) was adopted as law, and has been law for the past 20 years. I may once for all say here that, while regretting the fact that the legislation has had the effect of depriving many inamdars of rights solemnly conferred by

Sovereign authority many decades or centuries ago, the law that was passed cannot be called unfair or arbitrary. In prescribing a period beyond which these claims would become barred, there is no more arbitrariness than in prescribing periods of limitation in regard to ordinary civil rights and liabilities. This is an everyday incident of legislation and is justified on considerations of general policy and expediency. I cannot even say that the law is a "summary" one as the period of five years allowed was undoubtedly a sufficiently long period and several inamdars did as a matter of fact bring forward their claims and get them decided.

The question whether Government should take full advantage of the omission of the inamdars to prefer their claims to minerals within the time allowed has been under consideration from the year 1896. I think it will readily be admitted that Government have no desire to profit at the expense of the inamdar or gain an undue advantage over him. But the trouble is to find a satisfactory means of affording relief to these persons. The very fact that the question has been pending for the past 13 years shows how difficult it is to find a suitable remedy. Sir Seshadri Iyer had in view two possible methods of dealing with such cases. One was amending section 38 of the Land Revenue Code so as to give more time to inamdars to bring forward the

claims, and the other was to deal with individual cases as they came up. Sir Sheshadri Iyer thought that "it would be most invidious always to deal with individual cases" and "unwise to create inconvenient precedents by special concessions in particular cases", but he seems to have thought that the other remedy viz. legislation was more easy. But I fear that in this he ^{did} ~~im-~~ *not quite realise* ~~perfectly appreciated~~ the strength which the law had gathered from the lapse of more than ten years. Two of his colleagues in Council, Mr. Thamboo Chettyyar and Mr. Abdul Rahman were opposed to the proposal to amend the section. Sir Sheshadri Iyer himself, after having considered the subject for nearly three years, was, as may be seen from his note of the 24th February 1899, undecided as to the desirability of resorting to legislation in the matter and he postponed a decision on the point till after certain information was collected. If there were difficulties ten years ago in resorting to legislation, the difficulties have increased a hundredfold now and the present Council after giving their full consideration to the subject have held that it is inadvisable at this distance of time to amend the section with retrospective effect. Nothing would have been easier than to have extended the period of limitation fixed in section 38, if the question of such an extension had come up for consideration before the period expired. But now that a long time has elapsed since the period expired nothing is so

inexpedient as to resuscitate by legislation claims finally set at rest so long as 15 years ago.

The only other way of dealing with the subject is to deal with individual cases, as they arise, on their merits, and where the right of the inamdar to minerals (except for the operation of section 38 of the Land Revenue Code) is undoubted, and where there are special considerations which justify such a step, to make a regrant of the mineral rights, subject to such conditions and restrictions as it may be found desirable to impose. This must however be necessarily an exceptional treatment. This was the course that was recommended in the case of the Sringeri Jahgir and was approved by His Highness.

In the two cases which form the subject of the present reference, however, there are in my opinion no special features calling for such exceptional treatment.

Yours sincerely
(Sd) V. P. Madhava Rao

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DO file 202

16

Record of Cases submitted for the Orders
of His Highness the Maharaja.

Subject.

To H.H. No. 346
d/ 9-11-08.

Claim of Sir P.N. Krishnamurti and
Mr. M. Devaraj Urs to mineral rights in
their inam villages.

Order.

I accept the unanimous opinion of
the Dewan and Councillors. The claims
must be rejected.

(intd) K.R.W.

10-3-09.

(Intd) V.P.M.
11-3-1909.